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UNITED STATES PATENT AND TRADEMARK OFFICE  
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JAN 23 2002

David T. Read  
Acting Director Health Assessment Policy Staff, CDER  
Food and Drug Administration  
1451 Rockville Pike, HFD-7  
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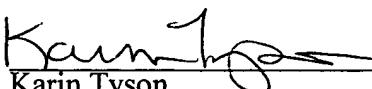
Dear Mr. Read:

The attached application for patent term extension of U.S. Patent No. 5,258,494 was filed on December 14, 2001, under 35 U.S.C. § 156.

The assistance of your Office is requested in confirming that the product identified in the application, OP-1™ IMPLANT, has been subject to a regulatory review period within the meaning of 35 U.S.C. § 156(g) before its first commercial marketing or use and that the application for patent term extension was filed within the sixty-day period after the product was approved. Since a determination has not been made whether the patent in question claims a product which has been subject to the Federal Food, Drug and Cosmetic Act, this communication is NOT to be considered as notice which may be made in the future pursuant to 35 U.S.C. § 156(d)(2)(A).

Our review of the application to date indicates that the subject patent would be eligible for extension of the patent term under 35 U.S.C. § 156.

Inquiries regarding this communication should be directed to the undersigned at (703) 306-3159 (telephone) or (703)308-6916 (facsimile).

  
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Karin Tyson  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: James F. Haley, Jr.  
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